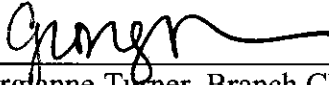


REQUEST FOR ACTION

To: Mark De Bie, Deputy Director
Waste Permitting, Compliance and Mitigation Division
Department of Resources Recycling and Recovery

From:


Georgianne Turner, Branch Chief
Waste Evaluation and Enforcement Branch
Department of Resources Recycling and Recovery

Hearing Date: December 11, 2017

Decision Subject: Consideration of the Issuance of Compliance Order CO 017-005 to
Unincorporated County of Merced

Action By: December 15, 2017

Summary of Request:

The Department of Resources Recycling and Recovery (Department) conducted a review of the Unincorporated County of Merced's (Merced-Unincorporated) implementation of, and compliance with, California's Recycling of Commercial Solid Waste, referred to as the Mandatory Commercial Recycling (MCR) law (California Public Resources Code (PRC) sections 42649-42649.7 and California Code of Regulations (CCR) sections 18835-18839). PRC section 42649.3 requires the Department to review whether a jurisdiction has complied with, or made a good faith effort to comply with, the requirements of the MCR law. For purposes of this evaluation, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its MCR program. The evaluation of good faith includes, but is not limited to, the factors found in PRC section 42649.3 (i)((1)-(7)).

Based on the Jurisdiction Compliance Unit (JCU) staff's observations, the following key deficiencies, as well as other details described in the report demonstrate Merced-Unincorporated has not made a good faith effort to comply with the requirements of the MCR law.

- Merced-Unincorporated did not implement a commercial solid waste recycling program that was designed to divert commercial solid waste from businesses within Merced-Unincorporated which are subject to PRC section 42649.2 and CCR section 18837.
- Merced-Unincorporated did not provide documentation supporting the efforts it has taken to notify businesses and multi-family complexes of noncompliance with the MCR law (PRC section 42649 (i)(4) and CCR section 18838 (a)(2)).
- Merced-Unincorporated's Annual Reports for 2012, 2013, 2014, and 2015, submitted on or before the August due date, were incomplete regarding implementation of the requirements of the MCR law (PRC section 42649.3 (g) and CCR section 18838 (h)).

Follow-up by Local Assistance and Market Development and JCU staff did result in some additional information, however, reporting was still incomplete and did not provide details to support that Merced-Unincorporated made all reasonable and feasible efforts to implement the following components of their program:

- Identification
- Monitoring

Based on JCU staff's review and analysis, JCU staff recommends that a Compliance Order (CO) be issued. As part of the CO, Merced-Unincorporated would be directed to develop a Local Implementation Plan (LIP). The LIP will identify a strategy for program enhancements, and local actions necessary to enable Merced-Unincorporated to meet the requirements of the MCR law.

PRC section 41825 (c)(2) requires the Department to issue a notice of intent to issue a Compliance Order not less than 30 days prior to conducting the hearing to consider issuing the Compliance Order. At any time prior to the hearing, at the hearing, or after the hearing the Department may decide not to commence compliance action if it finds that the jurisdiction has made a good faith effort to implement the MCR law.

Fines of up to \$10,000 per day may be imposed if the provisions of the Compliance Order and schedule are not met by the jurisdiction (PRC section 41850).

Recommendation:

Based on Department staff's review of Merced-Unincorporated's MCR efforts, staff recommends finding that Merced-Unincorporated is not complying with the MCR law and the approval of Compliance Order CO 017-005 as written. This recommendation is based on the information, analysis, and findings presented in both the Public Hearing and the Public Hearing package which support that Merced-Unincorporated has not complied with, or made a good faith effort to comply with, the MCR law.

Deputy Director Action:

On the basis of the information, analysis, and findings presented in both the Public Hearing and the Public Hearing package, I hereby find that the Unincorporated County of Merced is not adequately implementing its MCR program, and approve Compliance Order CO 017-005 as amended.

Dated: 12/12/17


Mark De Bie, Deputy Director
Waste Permitting, Compliance and Mitigation Division
Department of Resources Recycling and Recovery